

REMARKS

This Response is in reply to the Office Action mailed March 21, 2008. Claims 1-81 were pending in the application. Claims 1-69 and 77 were rejected, and claims 70-76 and 78-81 were withdrawn.

Claims 1-9, 13-26, 30-43, 47-58, 61-69, and 77 were rejected under 35 USC 102(b) as being anticipated by US Patent No. 5,415,659 (hereinafter Lee). Lee discloses a pedicle clamp with three hooks that act in concert to releasably attach to a selected vertebra. Multiple clamps can be attached to different vertebrae with an elongated plate attaching the clamps together.

Claims 1-6 are canceled and rejections to these claims are now moot.

Claims 7-8 were rejected in view of the marked up version of Figure 8 that appears on page four of the Office Action. The Office Action is incorrect by reasoning that the claimed functional statements do not impose any structural limitations on the claims that are distinguishable over Lee (Office Action, pages 10-11). Claim 7 requires, *inter alia*, a brace with a first end adapted to contact a spinous process of a first vertebra. The Office Action identifies either the plate 90 alone or the plate 90 and member 20 as the brace. The Office Action also identifies either or both of the superior end of the plate 90 or the superior end of the member 20 as the first end. In either interpretation, the identified structure does not perform the claimed function of contacting a spinous process of a first vertebra. Lee discloses positioning the pedicle clamps on the lamina, transverse process, and pedicle sections of the vertebrae to allow attachment by the hooks 24, 30, 50 (Col. 3, lines 36-40). This positioning is clearly lateral of the spinous processes of the vertebrae. The member 20 and plate 90 are attached to a central section of body 22. Member 20 and plate 90 appear from Figure 8 to include a narrower width than body 22, thus positioning these elements also laterally from the spinous process. Even more, the ends of these members are positioned away from the spinous processes. Further, the member 20 and plate 90 are intended to be positioned along the lateral side of the

vertebrae. These elements are not intended to be positioned to contact the spinous process. Therefore, Lee does not anticipate these functional limitations of the claim.

The Applicant further disagrees with any interpretation that the first end of the brace includes member 20. Page four of the Office Action is ambiguous as to exactly what elements are interpreted as the first end of the brace. Any interpretation that includes member 20 as being the first end of the brace is improper because one of ordinary skill in the art would not consider member 20 to be part of the plate 90. With only the plate 90 being interpreted as the brace, this interpretation of Lee does not satisfy the claimed element that the thickness of the brace measured between the first and second surfaces is greater at the first end than at the second end.

For at least these reasons, independent claim 7 and dependent claim 8 are not anticipated and are in condition for allowance.

Claims 9, 13-18, and 20-24 were rejected in view of the marked up version of Figure 8 that appears on page five of the Office Action. Claim 9 includes, *inter alia*, "a brace extending from the body and including an elongated shape with a major axis and a minor axis, wherein the brace has a distal end on the major axis adapted for contacting a spinous process of a L5 vertebra." It appears that the Office Action identifies either the plate 90 or the combination of the plate 90 and member 20 as the claimed brace. The plate 90 includes a distal end on the major axis as identified in the Office Action. However, Figure 8 clearly discloses that the distal end on the major axis is positioned away from the spinous process and cannot contact the spinous process. This is also true with regard to the end of member 20. As stated above for claim 7, both member 20 and plate 90 are positioned laterally of the spinous process and are not intended to contact the spinous process.

The Applicant disagrees with the rejection to the extent it includes the member 20 as being the claimed brace. One of ordinary skill in the art would not consider member 20 to be part of the brace.

For at least these reasons, independent claim 9 and dependent claims 13-18 and 20-24 are not anticipated by Lee and are in condition for allowance.

Claims 26 and 30-42 were rejected in view of the marked up version of Figure 8 that appears on page six of the Office Action. Claim 26 includes, *inter alia*, "a brace extending from the body and including a distal end adapted to contact a spinous process." The Office Action identifies either the plate 90 or the plate 90 and member 20 as the brace. As clearly illustrated in Figure 8 and identified in the specification of Lee, both the plate 90 and the member 20 are positioned lateral of the spinous process and do not contact the spinous process. Therefore, the distal end of both the plate 90 and member 20 are not adapted to contact the spinous process.

The Applicant disagrees with any interpretation that the first end of the brace includes member 20. Member 20 is not part of the brace. With only the plate 90 being interpreted as the brace, this interpretation of Lee does not satisfy the claimed element that the distal end includes a greater thickness than the elongated section.

For at least these reasons, independent claim 26 and dependent claims 30-42 are not anticipated by Lee and are in condition for allowance.

Claims 43 and 47-57 were rejected in view of the interpretation of Figure 8 on page 7 of the Office Action. Claim 43 includes, *inter alia*, first and second hooks adapted to engage a first vertebra, and a brace with the distal end having a curved surface that contacts the second vertebra. The Office Action identifies either the plate 90 or the plate 90 and member 20 as the brace, and the superior end of one or both as the distal end with a curved surface. However, as clearly shown in Figure 8 and defined in the specification of Lee, the plate 90 and member 20

are positioned lateral of and out of contact with the spinous processes. Therefore, the distal end does not contact the second vertebra as required in the claim.

For at least these reasons, independent claim 43 and dependent claims 47-57 are not anticipated by Lee and are in condition for allowance.

Claims 58, 61-64, and 66-69 were rejected over Figure 8 of Lee as interpreted on page 8 of the Office Action. Claim 58 includes, *inter alia*, "a brace connected to a posterior side of the body and including an elongated shape with a major axis, the brace including a first end on the major axis adapted to contact a spinous process of a second vertebra." The claim further requires "a mid-point of the first end contact against of the spinous process of the second vertebra." The brace of Lee is identified as the elongated plate 90 or the plate 90 and member 20. The first end is identified as the end of the member 20. As previously stated, this first end is positioned laterally away from the spinous process and is not adapted to contact the spinous process. Because the first end in general does not contact the spinous process, the mid-point clearly does not contact the spinous process as required in the claim.

For at least these reasons, independent claim 58 and dependent claims 61-64 and 66-69 are not anticipated by Lee and are in condition for allowance.

Claim 77 was rejected over Figure 8 of Lee as interpreted on page 9 of the Office Action. Claim 77 includes, *inter alia*, "the brace having a distal end with a curved surface with a first thickness and a beam with a second smaller thickness, wherein the curved surface is adapted to contact a spinous process of a second vertebra." Member 20 is identified in the Office Action as the distal end of the brace with the curved surface identified as the distal end of member 20. However, this curved surface is not adapted to contact the spinous process of the second vertebra. Member 20 is positioned lateral of the spinous process and does not contact the spinous process.

The Applicant further disagrees with any interpretation that the first end of the brace includes member 20. One of ordinary skill in the art would not interpret member 20 as being the first end of the brace. With only the plate 90 being interpreted as the brace, this interpretation of Lee does not satisfy the claimed element that brace includes a distal end with a curved surface with a first thickness and a beam with a second smaller thickness.

For at least these reasons, independent claim 77 is not anticipated by Lee and is condition for allowance.

Claims 10-12, 27-29, 44-46 and 59-60 were rejected under 35 USC 103(a) as being unpatentable over Lee. Claims 10-12 depend from claim 9 and are not obvious for at least the reasons stated above for independent claim 9. Claims 27-29 depend from claim 26 and are not made obvious for at least the reasons stated above for independent claim 26. Claims 44-46 depend from independent claim 43 and are not made obvious for least the reasons stated above for independent claim 43. Claims 59-60 depend from independent claim 58 and are not made obvious for at least the reasons stated above for independent claim 58.

In view of the above amendments and remarks, the Applicant submits the application is in condition for allowance and such action is respectfully requested.

Respectfully submitted,

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A handwritten signature in dark ink, appearing to read 'D. Kalish', is written over a horizontal line.

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